

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JEREMY LEVIN AND DR. LUCILLE LEVIN,	:
	:
Plaintiffs,	:
	: Case No. 09-Civ-5900 (RPP)
v.	:
	:
BANK OF NEW YORK, <i>et al.</i> ,	:
	:
Defendants.	:
-----X	
THE BANK OF NEW YORK MELLON, <i>et al.</i>	:
	:
Third-Party Plaintiffs,	:
	:
v.	:
	:
ESTATE OF MICHAEL HEISER, <i>et al.</i> ,	:
	:
Third-Party Defendants.	:
-----X	

**LIMITED RESPONSE OF THE ESTATE OF MICHAEL HEISER, ET AL.
TO THE LEVIN'S MOTION FOR 28 U.S.C. § 1292(b) CERTIFICATION
OF THE COURT'S OPINION AND ORDER DATED JANUARY 20, 2011**

The Estate of Michael Heiser, *et al.* (the "Heisers") by their undersigned counsel, hereby submit the following limited response to the Motion of Jeremy Levin and Dr. Lucille Levin (collectively, the "Levins") for 28 U.S.C. § 1292(b) Certification of the Court's Opinion and Order dated January 20, 2011 (the "Motion"). The Heisers do not take a position with respect to the Levins' request provided that the 28 U.S.C. § 1292(b) certification request is limited to the question identified in their Motion, *i.e.*, "that the Court certify for appeal under 28 U.S.C. §1292(b), its January 20, 2011 Opinion and Order on the issue of whether a court issued writ of execution is sufficient to establish priority under 28 U.S.C. § 1610 (Foreign Sovereign Immunities Act or FSIA), including the note thereto (Terrorist Risk Insurance Act or TRIA), for

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a 28 U.S.C. § 1605(a)(7) judgment specifically seeking to levy on assets set forth in TRIA and/or 28 U.S.C. § 1610(f)(1)(a) and the issue of whether a discharge of the Banks holding such assets is proper before the priority has been finally established after appeal.”

The portions of the January 20, 2011 Opinion addressing the Heiser’s Motion for Summary Judgment and the the Heiser’s claims to various assets in these proceedings, exclusive of any claim to the Phase One Assets¹ held at Citibank, N.A., and JPMorgan Chase Bank, N.A. which the Court ordered to be turned over to the Greenbaum and Acosta Judgment Creditors, are not final or properly appealable at this time. To the extent that the Levins seek to obtain immediate certification of the denial of the Heiser’s Motion for Summary Judgment, the Heisers object due to the fact that these matters and the Heisers rights are not final and should not be subject to an immediate appeal.

Accordingly, any certification order should be limited to whether the Levins’ writs of execution are invalid due to their failure to obtain a court order under 28 U.S.C. § 1610(c).

Dated: New York, New York
February 18, 2011

/s/

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¹ The term “Phase One Assets” has the meaning ascribed to it in the Order.
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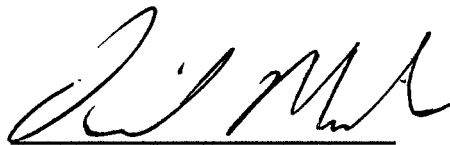
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THE BANK OF NEW YORK MELLON, <i>et al.</i>	:	
	:	
Third-Party Plaintiffs,	:	
	:	
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ESTATE OF MICHAEL HEISER, <i>et al.</i> ,	:	
	:	
Third-Party Defendants.	:	
-----X	:	

CERTIFICATE OF SERVICE

I, David B. Misler, Esq., an attorney admitted to practice before this Court, pro hac vice, under penalty of perjury, certify that on the 18th day of February, 2011, true and correct copies of the following documents were provided to the persons listed in the attached Service List, by the Court's CM/ECF electronic filing notification:

- (1) Limited Response of the Estate of Michael Heiser, *et al.* to the Levins' Motion for 28 U.S.C. § 1292(b) Certification of the Court's Opinion and Order Dated January 20, 2011

Dated: Baltimore, Maryland
February 18, 2011

A handwritten signature in black ink, appearing to read 'D. Misler', written over a horizontal line.

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